

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Standardized and Enhanced Disclosure	)	
Requirements for Television Broadcast	)	MM Docket No. 00-168
Licensee Public Interest Obligations	)	
	)	
Extension of the Filing Requirement	)	MM Docket No. 00-44
For Children's Television Programming	)	
Report (FCC Form 398)	)	
	)	
Initial Regulatory Flexibility Analysis	)	MM Docket No. 00-168

**JOINT COMMENTS OF THE  
NORTH CAROLINA ASSOCIATION OF BROADCASTERS,  
THE OHIO ASSOCIATION OF BROADCASTERS, AND  
THE VIRGINIA ASSOCIATION OF BROADCASTERS**

**and**

**RESPONSE TO INITIAL REGULATORY FLEXIBILITY ANALYSIS**

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## SUMMARY

The North Carolina Association of Broadcasters, the Ohio Association of Broadcasters, and the Virginia Association of Broadcasters submit these Joint Comments in response to the Commission's proposals to (1) place the public inspection file online; (2) require that stations' political files be maintained online in real time; (3) require stations to maintain letters and emails from the public in a paper file; and (4) require stations to report online all sponsorship identifications.

The Associations also respond to and comment on the Commission's Initial Regulatory Flexibility Analysis ("IRFA").

While the Associations support certain aspects of the Commission's proposal—namely, the Commission's proposal to make information currently in its possession more accessible to the public—the Associations urge the Commission to reconsider the proposals to adopt regulations that would impose new and substantial burdens on broadcasters.

Most significantly, the Commission's proposal to require online posting of a station's political file, on an "immediate" basis, should be reconsidered. The Commission's proposal is based on the assumption that the political buying process has become electronic and automated, and that, therefore, making these records accessible to the public on the Commission's website in electronic format represents an inconsequential task. This assumption is simply not accurate. Most stations continue to employ a combination of methods, including manual methods, to document political advertising transactions. Even to take these records and scan them to the Commission's

servers would involve scanning thousands of pages of documents and would consume substantial staff and station resources—all for dubious public benefit.

The Associations support the Commission’s tentative conclusion that letters and emails from the public should only be kept—consistent with current practice—in paper or electronic form for local access at station studios. Stations receive hundreds (and, in some cases, thousands) of public messages a year. Uploading these comments to the Commission’s website would impose a tremendous and unnecessary burden on local broadcasters.

The Associations do not support the Commission’s proposal to require online filing of sponsorship identification information. The proposal is vague, its reach is indefinite under the Commission’s rules, there are related pending proceedings, and the requirement would impose a substantial new operational and financial burden on broadcasters. The proposal goes beyond current public file requirements as well as the requirements of applicable law. Read literally, the requirement could require broadcasters to review every piece of programming aired to ensure that all special sponsorship identification disclosures are captured and uploaded to the FCC. Such a requirement would be a tremendous and unnecessary burden on local broadcasters.

Finally, the Commission’s Initial Regulatory Flexibility Analysis completely fails to undertake the analysis required by the Regulatory Flexibility Act. The Commission’s estimate of the burden of compliance with the proposed new online filing requirements is understated, amounts to mere “lip service,” and contradicts the Commission’s prior determinations without supporting evidence. In sum, the Commission’s IRFA fails to adequately consider the impacts of the proposals on small businesses and, for this reason

alone, the Commission's proposals should be held in abeyance until this analysis is undertaken.

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**RESPONSE TO INITIAL REGULATORY FLEXIBILITY ANALYSIS**

The North Carolina Association of Broadcasters (“NCAB”), the Ohio Association of Broadcasters (“OAB”), and the Virginia Association of Broadcasters (“VAB”) (collectively, the “Associations”), through their attorneys, hereby jointly submit these comments in response to the Commission’s Further Notice of Proposed Rulemaking, FCC 11-162, (the “*Notice*”) in the above-captioned proceeding relating to the proposed online public file.

**I. INTRODUCTION AND BACKGROUND**

The Associations are non-profit organizations representing the interests of broadcasters in their respective states. NCAB has 206 radio and 36 television members.

OAB has 267 radio and 55 television members. VAB has 183 radio and 31 television members.

In the instant proceeding, the Commission seeks comments on several proposals relating to television station public inspection files. The *Notice* includes proposals to (1) place the public inspection file online; (2) require that stations' political files be maintained online in real time; (3) require stations to maintain letters and emails from the public in a paper file; (4) require stations to report all sponsorship identifications online; and (5) require stations to maintain electronic copies for back-up purposes of all of the public file items.<sup>1</sup> The Commission's estimate of the burden of compliance with the proposed new requirements is understated<sup>2</sup> and, at times, contradicts the Commission's prior determinations without supporting evidence. For the reasons discussed below, the Associations urge the Commission to reconsider aspects of its proposed new regulations that would impose new and substantial burdens on broadcasters.

In preparation for these comments, the Associations conducted surveys of television members on the issues raised by the *Notice*.<sup>3</sup> The survey results confirm that North Carolina, Ohio, and Virginia broadcasters would face significant operational and

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<sup>1</sup> See *Notice* at Appendix B (Proposed Rules).

<sup>2</sup> The Commission's estimation of the burden to be imposed on stations in complying with the new rule is non-existent, as the Commission "assumes away the problem," without record support for its conclusion, through the artifice of equating the burden of placing a document that is prepared only periodically (e.g., a biennial ownership report) in the public inspection file with the burden of collecting literally thousands of pages of documents (e.g., the political file), since they each comprise one element of the public inspection file.

<sup>3</sup> The expedited procedural schedule in this proceeding has hampered the Associations' ability to conduct a more robust survey of their respective members. It is disconcerting that the Commission has proposed to impose new, substantial regulatory burdens on broadcasters, without appreciating the realities of the manner in which political time is sold and documented nor providing a sufficient opportunity for development of a meaningful record.

financial burdens as a result of the proposed regulations. As discussed below, elements of the proposals in the *Notice* would consume significant financial and human resources, diverting those resources from station operations and the production of programming. Thus, the practical, albeit unintended, consequence of the proposals, if adopted, would be to undermine the ability of local broadcasters to address the very local needs and concerns which the Commission seeks to promote through its public file and related requirements.<sup>4</sup>

In the instant proceeding, the Commission vacated the rules adopted in its 2007 *Report and Order*, and now seeks comment on new proposals intended to take a fresh look at broadcasters' public disclosure obligations.<sup>5</sup> The Associations agree with the Commission's efforts to streamline the public inspection file and ease regulatory burdens on television stations, but the Associations disagree with some of the assumptions and specific proposals set forth in the *Notice*.

At the outset, the Associations acknowledge that the Commission's proposal to host an online public file is partly, in principle, an improvement from the now-vacated 2007 rules.<sup>6</sup> In practice, however, the online public file, as proposed, will require stations to maintain an online file, a copy of the online file, *and* a limited paper file and will

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<sup>4</sup> See, e.g., Philip M. Napoli, *Television Station Ownership Characteristics and Local News and Public Affairs Programming: An Expanded Analysis of FCC Data*, Fordham Univ. (2004) (avail. at [www.emeraldinsight.com/journals.htm?articleid=874003&show=html](http://www.emeraldinsight.com/journals.htm?articleid=874003&show=html)) (demonstrating correlation between profitability of station and its ability to provide local news and public affairs coverage).

<sup>5</sup> See *Notice* ¶ 7; see also *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Report and Order, 23 FCC Rcd 1274 (2007).

<sup>6</sup> See *Notice* ¶¶ 15-16.



impose the additional burden of new and immediate reporting requirements that are not currently required and that will be unduly burdensome to broadcasters.

The Associations agree with the Commission's proposal to provide centralized public access to documents already stored in FCC databases. The *Notice* proposes that all documents electronically stored in various FCC databases would be aggregated and made available in the online public file without any further action by stations.<sup>7</sup> The Associations agree that this proposal would be potentially useful for the public and practicable for the Commission to achieve. In fact, the Commission should already have the technical ability to create this resource—without any further rulemaking—by universalizing the various databases and filing systems on its website and providing links to relevant documents in a user-friendly interface for the public. Such a centralized system would provide public access to information without imposing any additional burdens on stations. Accordingly, the Associations support this component part of the proposal.

The Associations disagree, however, with the factual assertion, for which no data is provided, that “more than a third of the required content of the public file” would have already been filed with the Commission and, thus, would be imported by the FCC to a centralized online public file without any action by stations. The Commission appears to derive its one-third figure by taking the 18 or so *categories* of public file documentation, and recognizing that approximately 6 categories are routinely filed with the agency. This mathematical approach is flawed, because to the contrary, the fact is that most of the volume of stations' public files consists of pages of documents not already filed with the

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<sup>7</sup> See *Notice* ¶ 16.

FCC. Under the proposal to require stations to upload these (and more) additional items to the online public file, each station would still be responsible for posting more than two-thirds of the contents of the file in terms of paper work and page numbers. For many stations, this process would involve significant additional costs, including new equipment, technological upgrades, staffing, and time diverted away from programming activities.<sup>8</sup>

The Associations disagree with the characterization in the *Notice* that an online public file will virtually replace stations' "paper" public files.<sup>9</sup> Taken together, the proposed rules would actually require stations to maintain (1) an online file, (2) a copy of the online file, *and* (3) a limited paper file. This is hardly a reduction in the overall regulatory burden. The Commission has grossly underestimated the burden of creating, updating, and maintaining these materials. For example, as a practical matter, the requirement for stations to maintain an electronic copy of the online file—with up-to-date copies of documents scanned or uploaded in an appropriate format—would be more burdensome than simply maintaining a paper copy at a station's main studio. In fact, the burden resulting from implementation of the Commission's current proposal would equal or exceed the burden of hosting a station's own online public file—a proposal rejected by the Commission on those grounds in this proceeding.<sup>10</sup>

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<sup>8</sup> *Accord In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Comments of the National Association of Broadcasters On Proposed Information Collection Requirements, pp. 15-16 (May 12, 2008) (discussing burden on stations to convert documents to a compatible format for upload, including thousands of dollars to scan, convert, and index pages).

<sup>9</sup> See *Notice* ¶¶ 2, 10, 15.

<sup>10</sup> See *Notice* ¶ 15.

Further, the Commission’s purported justification for the new requirement—advancing the needs of academics and advocacy groups—is not a sufficient justification for imposing a new and substantial regulatory burden. Even now, the public does not have unfettered access to a station’s public file without interruption—public access is limited to “regular business hours.”<sup>11</sup> The Commission’s proposal for stations to maintain an electronic copy of the public file at stations so the public will have access in the unusual event that the FCC website is unavailable would impose burdens on stations that far outweigh the public benefit in that rare instance. In the Commission’s zeal to promote the supposed efficiencies of the Internet, it seems willing to impose any cost on local broadcasters to benefit academics and Washington, D.C.-based advocacy groups.<sup>12</sup> This is as far as one can get from localism and local public service.

For these reasons, the Associations oppose the proposal to require stations to maintain an electronic copy of the online public file.

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<sup>11</sup> 47 C.F.R. §73.3526 (c), 73.3527 (c).

<sup>12</sup> See, e.g., Benjamin, Stuart M., “Roasting the Pig to Burn Down the House: A Modest Proposal” (2009), *Duke Law Faculty Scholarship*, Paper 1949 (available at [http://scholarship.law.duke.edu/faculty\\_scholarship/1949](http://scholarship.law.duke.edu/faculty_scholarship/1949)), at 100 (advocating that “regulations that would be undesirable standing on their own will be desirable once we factor in the degree to which they will hasten the demise of over-the-air broadcasting”); “Genachowski Hires Broadcast TV Hitman,” *TVNewsCheck*, Harry A. Jessell, Dec. 11, 2009 (noting the appointment of Professor Benjamin as the FCC’s first “Distinguished Scholar in Residence”). This kind of cynical academic regulatory approach would, if actually employed, be the antithesis of Congressional policies reflected in the Communications Act of 1934, 47 U.S.C. § 151, *et seq.*, the Paperwork Reduction Act, Pub. L. No. 104-13, and the Regulatory Flexibility Act, 5 U.S.C. § 603.

## II. THE COMMISSION SHOULD NOT REQUIRE THAT THE POLITICAL FILE BE MAINTAINED ONLINE IN REAL TIME

The *Notice* proposes that every station be required to upload its political file to the online public file on an *immediate* basis.<sup>13</sup> The Commission has tentatively concluded that stations should be required to upload the records to an online public file according to the same standard that is currently applied by the rules to the paper political file: *immediately* absent unusual circumstances.<sup>14</sup> The *Notice* seeks comment on the relative burdens and benefits that broadcasters would face under this requirement.

Federal law, of course, currently requires broadcasters to make certain information concerning political ad buys publicly available.<sup>15</sup> This material is required

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<sup>13</sup> See *Notice* ¶ 23; 47 C.F.R. § 73.1943(c).

<sup>14</sup> 47 C.F.R. § 73.1943 (political file rule); See *Notice* ¶ 23.

<sup>15</sup> See 47 U.S.C. § 315(e), as follows:

(1) In general. A licensee shall maintain, and make available for public inspection, a complete record of a request to purchase broadcast time that--(A) is made by or on behalf of a legally qualified candidate for public office; or (B) communicates a message relating to any political matter of national importance, including--(i) a legally qualified candidate; (ii) any election to Federal office; or (iii) a national legislative issue of public importance.

(2) Contents of record. A record maintained under paragraph (1) shall contain information regarding--(A) whether the request to purchase broadcast time is accepted or rejected by the licensee; (B) the rate charged for the broadcast time; (C) the date and time on which the communication is aired; (D) the class of time that is purchased; (E) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable); (F) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and (G) in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.

(3) Time to maintain file. The information required under this subsection shall be placed in a political file as soon as possible and shall be retained by the licensee for a period of not less than 2 years.

by Commission policy to be placed in the political file “as soon as possible” and made publicly available for a two-year period.

In its 2007 action, the Commission exempted the political file from online posting requirements.<sup>16</sup> The FCC correctly determined, based on the record before it in 2007, that it would be unduly burdensome for stations to have to upload political file documents continually into an online public file.<sup>17</sup> Now, without citing any empirical data, the Commission has reversed its position and concluded that the requirement would “impose far less of a burden than previously thought.”<sup>18</sup> In fact, the proposed rule would impose a tremendous burden on broadcasters, particularly in light of the proposed requirement that stations continually and *immediately* upload political file documents. The Commission’s inconsistency<sup>19</sup> in its current articulation of its proposal, combined with the reversal of its earlier position on the issue, is a strong indication that its proposal to require an online political file is not supported by the record. Moreover, in light of the current substantial fines for violations of the Commission’s rules, the imposition of a new online filing requirement threatens to create a new and substantial source of regulatory liability for

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<sup>16</sup> See *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Report and Order, 233 FCC Rcd 1274 ¶¶ 19-20 (2007).

<sup>17</sup> See *Notice* ¶ 22, ¶ 22 n.64.

<sup>18</sup> *Notice* ¶ 23.

<sup>19</sup> Notably, the text of the *Notice* is internally inconsistent with respect to how frequently stations would be required to upload political file documents. In Paragraph 23, the *Notice* states that the same rule for the paper political file would be imposed for the online political file: “immediately absent unusual circumstances.” The language of the proposed rule (in Appendix B to the *Notice*) agrees. Paragraph 23 also states that “Immediacy is necessary with respect to the political file because a candidate has only seven days from the date of his opponent’s appearance to request equal opportunities. . . .” However, in a footnote to the same paragraph, the Commission notes that a station would upload up-to-date political file information only “periodically.” See *Notice* ¶ 23 n.68.

broadcasters that is not tethered to any demonstrable public need, harm or concern.

The Commission's proposed requirement is based on the erroneous determination that most political advertising transactions are performed electronically.<sup>20</sup> This is in error. The *Notice* cites no empirical data to support this determination, but rather assumes that the requirement would not be as burdensome as the Commission thought in 2007.<sup>21</sup> In fact, little about the manner in which political advertising transactions are conducted has changed since 2007. For example, 85% of the Associations' survey respondents reported no changes to their political advertising methodology and practices since 2007. Although some stations reported an increased use of computer generated sales information, these stations also generally indicated use of varied electronic media for this purpose, with resulting varied and incompatible electronic formats. Contrary to the assumptions of the Commission, political time continues to be sold using a variety of non-automated processes, including telephone conversations, handwritten forms, emails, and faxes. One of the most successful and profitable stations providing a survey response, a station with significant local news, public affairs and program production, reported using handwritten documents for approximately 90% of its political file. The electronic transactions that do take place are not necessarily—and, in fact, almost never are—in a format that facilitates uploading to an online public file hosted by the FCC because station receives orders in various formats. Even if the Commission required only

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<sup>20</sup> See *Notice* ¶¶ 22-23 (“Since exempting the political file in 2007, we have learned that the vast majority of television stations handle political advertising transactions electronically, through e-mails and a variety of software applications.”(emphasis added)).

<sup>21</sup> See *Notice* ¶ 23

the uploading of existing documents from the political file, stations would still have to scan, organize, and upload the documents individually.<sup>22</sup>

The burden of simply scanning existing political file document is hardly trivial. Of the stations surveyed by the Associations, the respondents reported an *average* of 2,900 pages in their political file. And, as discussed, these pages are not uniform in their size or format, as stations utilize a variety of approaches to documenting political ad purchases. Under any analysis, the scanning of this volume of material to distant servers will be an imposing burden—particularly in the midst of a heavy political season where most activity is concentrated into a few months. This burden is compounded, of course, by the proposal that broadcasters upload their political file on an “immediate” basis. The political time marketplace is a fluid and dynamic environment—candidates, advertisers and their representatives are calling to inquire about availability, asking about rates, negotiating for the purchase of orders, revising orders based on changing levels of availability and the advertising of others. In such an environment, a literal “immediacy” requirement is simply not attainable in the real world, and the Commission’s new requirement would simply amplify the burden of the new requirement in the first place.

Moreover, the Commission cannot simply assume that all broadcasters have the necessary equipment to scan high-quality documents to the Commission’s servers—indeed, 23% of the Associations’ survey respondents reported that they do not possess a high-quality scanner that would be necessary to upload the thousands of pages of

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<sup>22</sup> Several stations who responded to the Associations’ survey indicated that this process could require them to hire additional personnel to run daily reports and submit the data to the FCC. Notably, however, the *Notice* is imprecise as to the Commission’s proposed technical process of data submission, so it is difficult for stations to respond and quantify the burden at this stage.

documents in their political files. Contrary to the implication in the *Notice* that stations could somehow simply drag and drop these records into an FCC web interface, the requirement to upload all political documents would actually impose the substantial burdens of additional paperwork, manipulation and formatting of documents, upgraded equipment, and hours of time on the part of station employees.<sup>23</sup> Moreover, the pace of political advertising transactions in the heat of an election campaign, including each buy and change order, is much too fast to expect reasonably that stations update these materials online in real time.

The Commission's proposal to require stations to input political file information into prescribed online forms is even more concerning. One only needs to look at the Commission's recently revised broadcast ownership report filing requirements to see the additional burdens that would be imposed on stations if similar formatting requirements were required for the online political file. It has been the experience of Association members and the Associations' undersigned counsel that inputting ownership data into the Commission's prescribed ownership report forms has taken stations and their counsel extraordinary amounts of time due primarily to the facts that the Commission's forms require similar data to be manually inputted multiple times, that the Commission's online filing interface is less than ideal, and that in times of high usage, the Commission's servers are slow to respond, often requiring the person inputting the data to wait several minutes to several hours for inputted data to be "validated" before additional data may be

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<sup>23</sup> Although, at this stage, the *Notice* proposes not to require that documents be uploaded in a particular database-friendly format, extensive formatting would eventually be required under the scope of the proposal. See *Notice* ¶ 37. Moreover, substantial manipulation and formatting would be necessary and unavoidable in order for stations to upload individual documents.



submitted.<sup>24</sup> The number of personnel hours that stations have had to dedicate to fitting ownership data into the Commission's new on-line ownership reports is simply astonishing. Similar burdens would equally apply if the Commission were to adopt a similar on-line filing mechanism for the political file.

The Associations acknowledge that, in requiring stations to maintain political files, the Commission's goal is to provide access to candidates and the station's local community to relevant and timely information. The Associations disagree, however, with the Commission's implicit suggestion that there exists a generalized right for academics and researchers to rely on stations' staff as research assistants and each station as some sort of library of "aggregable and searchable" data.<sup>25</sup> The Associations are not aware of any previous instance where such a generalized interest has served as a basis for local broadcast regulation. It is unreasonable to require broadcasters to divert resources away from their important local functions to meet the needs of occasional and unknown "researchers" for access to standardized data for "analyses of industry performance."<sup>26</sup> Whatever research needs do exist are far outside the intended function of local broadcasters' service to their communities, and to accommodate them would divert stations' time and money away from the development of local programming. More to the point, the Federal Elections Commission (FEC) and local state boards of election, not the FCC, are the agencies with primary authority over the elections process. As such, the FEC requires extensive campaign financing reporting that is available to researchers and others that have an academic or research interest in election data. Most states do

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<sup>24</sup> See Declaration of Kim Eshleman, attached hereto.

<sup>25</sup> See Notice ¶ 48.

<sup>26</sup> See *id.*

likewise. These agencies are the proper venue for more generalized concerns regarding the elections process, as opposed to the more localized concerns reflected in the Commission's regulation of broadcasters.

In addition, an online collection of broadcasters' political file documents does not necessarily accomplish the Commission's goal of providing a meaningful source of information for candidates, buyers, viewers, and other members of the public. For candidates in particular, it is more meaningful and efficient to speak with a station's sales department on the phone or to visit the station to view the political file. On the phone or at the station the candidate has access to station staff who can provide context to assist with sales orders and, understanding the political file materials, provide explanations where necessary, and help determine if there are additional buys in progress. These important personal interactions between candidates and station staff would be completely lost if political file materials were only available online. It could also prove to be more burdensome and confusing for the candidates to review online political file materials, determine what questions they have for stations, and then attempt to follow up with stations for more information. For example, if a candidate found materials online and called a station for answers and assistance, it may not even be clear if the station staff were looking at precisely the same materials as the candidate or agency. The process would be very frustrating and would create inefficiencies for buyers and station staff.<sup>27</sup>

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<sup>27</sup> The Associations disagree with the Public Interest, Public Airwaves Coalition's (PIPAC's) argument that placing political file information online will reduce the burden on broadcasters because stations receive in-person requests to access the information during an election season. *See Notice* ¶ 22 Based on the experience of the Associations' members and undersigned counsel, this is simply not the case, as broadcasters will have to continue to work with candidates and others wishing to buy time while picking up the added regulatory burden of  
(continued . . . )

For these reasons, the Associations oppose the proposed requirement that a station's political file be maintained online in real time.

### **III. LETTERS AND EMAILS FROM THE PUBLIC SHOULD NOT BE REQUIRED TO BE POSTED ONLINE**

The *Notice* also proposes that letters and emails from the public should not be required to be placed in the online public file.<sup>28</sup> Consistent with its findings in 2007, the Commission has tentatively concluded that such a requirement would pose potential burdens to stations and privacy concerns for the public.<sup>29</sup> The Associations agree that stations should not be required to post letters and emails they receive from the public to an online public file. Rather, the Associations agree with the Commission's alternative proposal that stations should maintain a paper correspondence file available locally at the station.<sup>30</sup>

The Associations also agree with the Commission's tentative conclusion that comments posted on social media pages (such as Facebook and Twitter) should not be included in the category of "written comments and suggestions received from the public regarding operation of the station."<sup>31</sup> Stations should not have to retain these comments and should not be required to be maintained them in a correspondence file, either online or in hard copy. The comments are already "public" when they are posted in these fora, and requiring stations to retain or record the comments would be wasteful of resources,

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spending substantial time and resources to upload this same information for the benefit of researchers and others with a more generalized interest in political contracts.

<sup>28</sup> *Notice* ¶ 26.

<sup>29</sup> *See Notice* ¶ 25.

<sup>30</sup> *See Notice* ¶ 26.

<sup>31</sup> *See id.*

duplicative and unduly burdensome given the transient nature of social media. Because these comments are already public, they are sufficiently available and accessible to the station's community without any further action by stations.

The *Notice* also seeks comment on PIPAC's proposal to require stations to report quarterly on how many letters they have received from the public.<sup>32</sup> The Commission asks what would be the benefits of requiring stations to count and report how many letters they have received, and what would be the burdens of such a requirement.<sup>33</sup> The Associations submit that this proposal contributes almost nothing to the availability of meaningful public information. Indeed, a raw number of letters is meaningless for regulatory purposes and would be just as meaningless to the public. Requiring stations to provide a "brief description" of letters and emails, as PIPAC also proposes, would be hugely burdensome given the number of pieces of correspondence that many stations receive.<sup>34</sup> One of the stations surveyed by the Associations reported receiving 40,000 viewer emails in a single year; others reported receiving hundreds and thousands of letters and emails from viewers. The Associations contend that requiring stations to maintain a paper or electronic correspondence file that is available for inspection at the station will sufficiently ensure accountability to the station's community without unduly burdening the station.<sup>35</sup>

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<sup>32</sup> *See id.*

<sup>33</sup> *See id.*

<sup>34</sup> *See Notice* ¶ 26.

<sup>35</sup> *See In re Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, 98 F.C.C. 2d 1076 (1984), *aff'd in part, remanded in part*, *Action For Children's Television v. FCC*, 821 F.2d 741 (D.C. Cir. 1987) (finding that "market incentives will ensure the presentation of (continued . . . )

#### **IV. THE COMMISSION SHOULD NOT REQUIRE ONLINE REPORTING OF ALL SPONSORSHIP IDENTIFICATIONS**

The *Notice* seeks comment on whether broadcasters should be required to report all sponsorship identifications in the online public file.<sup>36</sup> In other words, when a station airs news or information programming that would require an on-air disclosure under the FCC sponsorship identification rules, the station should also list that information in its online public file.<sup>37</sup> The Associations disagree with this proposal because the requirement is vague, its reach is indefinite under the Commission's rules, there are related pending proceedings, and the requirement would impose a substantial new burden on broadcasters.

The proposed requirement appears to encompass all instances where a “paid for by,” “sponsored by,” or “furnished by” tag is included; advertisements for commercial products and services would be excluded.<sup>38</sup> Although it is not entirely clear in the *Notice*, this proposal would affect programming including all political advertisements, certain long-form advertising, paid religious programming, PSAs, government-sponsored and government-furnished material, and VNRs. The Associations oppose the proposal's vast expansion of station reporting requirements.

First, the proposal to require reporting of all sponsorship identification announcements puts the proverbial “cart before the horse.” The Commission currently

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programming that responds to community needs and provide sufficient incentives for licensees to become and remain aware of the needs and problems of their communities”).

<sup>36</sup> See *Notice* ¶ 33-34.

<sup>37</sup> See *id.*

<sup>38</sup> See *Notice* ¶ 34 (certain commercial product advertisements not affected because they are exempted from current sponsorship identification rules).

has pending at least two proceedings relating to the scope of the sponsorship identification rule, including a proceeding considering the requirements for VNRs and a proceeding regarding “embedded advertising.”<sup>39</sup> The Associations contend that, before proposing this new reporting requirement for the public file, the FCC should first clarify precisely which program material is subject to the sponsorship identification rules. Stations cannot properly evaluate the burden that would be imposed to collect, list, and upload sponsorship disclosure information until these proceedings are resolved and the stations know what disclosure will be required. The outcome of the pending proceedings will have a significant impact on the burden that would be imposed on broadcasters to gather, record, and post information about disclosures in these forms of programming.

Further, the proposed requirement for broadcasters to list in the public file all sponsorships that require disclosure would be enormously burdensome on stations. The proposal would impose burdens well beyond the suggestion in the *Notice* that a station already collects information about disclosure. For example, stations would have difficulty determining whether program material produced or provided by other sources contains sponsorship identification. So, in addition to collecting and retaining information about a station’s own programming, station staff would have to watch all of the non-station produced programming, which can be hours upon hours of syndicated and network programming. Such a requirement would be plainly burdensome on stations given the sheer number of hours of programming to watch to collect this information.

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<sup>39</sup> See generally *In the Matter of Sponsorship Identification Rules and Embedded Advertising*, Notice of Inquiry and Proposed Rulemaking, 23 FCC Rcd 10682 (2008); *Commission Reminds Broadcast Licensees, Cable Operators and Others of Requirements Applicable to Video News Releases and Seeks Comment On The Use of Video News Releases by Broadcast Licensees and Cable Operators*, Public Notice, 20 FCC Rcd 8593 (2005).

Undoubtedly, many stations would be duplicating effort watching the very same syndicated or network-produced programming, which is an inefficient drain on the resources of broadcasters. The impact of the requirement would conflict with the Commission's stated goals in this proceeding to modernize and streamline the public file requirements and reduce the burden on broadcasters.<sup>40</sup>

Moreover, the proposed reporting requirement does not further any specific purpose under the sponsorship identification rules.<sup>41</sup> The relevant statutes require that disclosure be made "at the time of broadcast," and the Commission's rules are intended to inform viewers "by whom they are being persuaded."<sup>42</sup> The proposed reporting requirement would create a neverending list of disclosures that are completely devoid of context. Taken apart from the context of the persuasive messages and the moment of their delivery, a list of sponsorships would be meaningless to the public. Further, the list (as proposed) would not include information about the nature of the program material, whether it was intended to be persuasive, whether it promoted a product, service, idea, or something else, how long the material was, or other contextual details. In other words, the proposed reporting requirement really would not provide information about the "extent of such sponsorships" as the *Notice* professes.<sup>43</sup> And to require stations to collect

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<sup>40</sup> See *Notice* ¶ 10.

<sup>41</sup> In fact, the proposed requirements fall outside the scope of the FCC's authority over sponsorship identification. The relevant statutes are specific directives to require disclosure of sponsorship *to viewers* and do not direct or authorize the Commission to require collection or reporting of the information in this way.

<sup>42</sup> See 47 U.S.C. § 317 (disclosure required "at the time [the message] is broadcast"); 47 U.S.C. § 508 ("The inclusion *in the program* of the announcement. . . shall constitute the disclosure required by this section." (emphasis added)); see also *Applicability of Sponsorship Identification Rules*, Public Notice, 40 FCC 2d 141 (1963).

<sup>43</sup> See *Notice* ¶ 34.

and report the amount of information needed to make the lists useful would impose considerable additional burden on broadcasters for no perceptible public benefit.

As discussed above, the sponsorship identification rules are intended to inform viewers in the community at the time they receive sponsored messages or information. Although the *Notice* seeks to create a permanent, searchable record of sponsorships, a list on its own would not serve a meaningful purpose for viewers or provide meaningful information to the community. Television stations endeavor to serve the local community with, among other things, access to information. To the extent that a permanent record of sponsorship announcements might aid researchers or academics outside of the community, there is no generalized right for researchers to conscript stations as research librarians. In any event, it is unnecessary to require that stations provide this service—some private media sources are already undertaking to monitor and track political advertisements to provide this aggregated data, presumably at great expense.<sup>44</sup> To demand reporting by stations in this way would take valuable time and resources away from important functions of broadcasters actually serving their communities.

In summary, there has been no showing that the existing disclosure requirements are not sufficient to adequately apprise viewers of the sponsor of messages they are viewing—acknowledging, however, that the Commission has open proceedings on this issue. In any event, regardless of how the Commission resolves its open proceedings, the additional requirements proposed by the Commission with regards to the collection

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<sup>44</sup> For example, Media Monitors has reportedly begun tracking political and issue advertising for the 2012 election season. See *Snapshot: Political Advertising on Television in November*, RBR.COM, Nov. 23, 2011, <http://www.rbr.com/tv-cable/snapshot-political-advertising-on-television-in-november.html>.



and dissemination of sponsorship identification would impose substantial burdens for little, if any, public benefit.

**V. THE COMMISSION FAILS TO ANALYZE THE IMPACT OF THE PROPOSED RULES ON SMALL BUSINESSES AS REQUIRED BY THE REGULATORY FLEXIBILITY ACT**

Under the Regulatory Flexibility Act of 1980, as amended (“RFA”), the FCC must both analyze the economic impacts on small entities and consider significant alternatives to minimize the impact.<sup>45</sup> As discussed above, the Commission has not fully acknowledged, much less actually considered and developed any data to evaluate, the economic impacts of its proposals to require broadcasters to upload their political files to the FCC’s servers and to require broadcasters to report all sponsorship identifications in the online public file.

In its Initial Regulatory Flexibility Act analysis, the Commission leaps to the unsupported conclusion that no significant impact will be imposed by the proposed rules on small entities.<sup>46</sup> The Commission’s conclusion that “[h]aving the Commission host the public file will ease the administrative burdens on all broadcasters”<sup>47</sup> is based on false assumptions and unsupported by any data at all.<sup>48</sup> First, the Commission fails to acknowledge that most of the documents in stations’ public files are not already filed

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<sup>45</sup> See 5 U.S.C. § 603.

<sup>46</sup> See Appendix C to the *Notice*, ¶¶ 1, 10.

<sup>47</sup> See *id.* ¶ 10.

<sup>48</sup> For example, in addition to failing to meaningfully analyze the burdens imposed by its proposals, the Commission omits any reference to the cost that will be incurred by the federal government in storing and, potentially, processing the voluminous data that it seeks—which costs will then undoubtedly be returned to small businesses via the regulatory fee process. Any fair consideration of cost must include the additional regulatory costs to be borne by the regulated entities of the proposed requirements.

with the FCC. Under the proposal to require stations to upload these (and more) additional items to the online public file, each station would still be responsible for posting the majority of the contents of the file in terms of paper work and page numbers. For many stations, this process would involve significant additional costs, including new equipment, especially small entities, technological upgrades, staffing, and time diverted away from programming activities. The Commission's attempt to equate the burden of placing a document that is prepared only periodically (e.g., a biennial ownership report) in the public inspection file with the burden of collecting literally thousands of pages of documents (e.g., the political file), since they both comprise one element of the public inspection file, falls far short of the sort of analysis required by the RFA.

Moreover, the Associations disagree with the characterization in the *Notice* that an online public file will virtually replace stations' "paper" public files.<sup>49</sup> As stated above, taken together, the proposed rules would actually require stations to maintain an online file, a copy of the online file, *and* a limited paper file, and the Commission has underestimated the burden of creating, updating, and maintaining these materials. Because the FCC has failed to engage in a serious and adequate regulatory flexibility analysis, it would be premature to adopt the rules as proposed.

## CONCLUSION

The Associations respectfully request that the Commission consider these Comments and refrain from imposing rules that would result in unnecessary or burdensome regulation.

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<sup>49</sup> See *Notice* ¶¶ 2, 10, 15.

Respectfully submitted,

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December 22, 2011